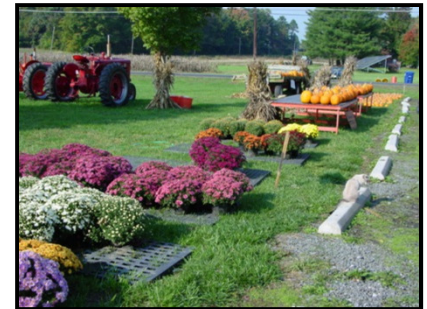


On-Farm Direct Marketing AMP

And Proposed Changes to RTF Procedures



December 13, 2012 SADC Meeting

AMP Development – Process

- AMP working group convened (May 2010 – Dec. 2011)
 - Reviewed RTF Act and prior SADC farm market / agritourism efforts
 - Staff outreach and research in 2011 – visited 75 farms
(hot topics: signs; ability to sell products not your own; a reasonable local review process; flexibility of standards; temporary parking)
- Initial AMP draft reviewed by SADC (Dec. 2011)
- Draft circulated to agricultural community and public for comments (Jan. – April 2012)
- Outreach presentations at Ag Convention, Rutgers agritourism seminars, and CADB mtgs. (Jan. – April)

AMP Development – Process

- AMP working group reconvened (June – Oct. 2012)
 - Comments reviewed; revisions discussed
 - 52 commenters (13 farmers, 10 towns, 9 CADBs, 6 residents, 4 county boards of agriculture, 2 attorneys, 2 planners, Farm Bureau, Rutgers, others)
 - Feedback compiled –
 - agricultural community appreciative of the effort
 - many small suggestions for specific revisions (e.g., on signs, setbacks, activities, event plans, definitions)
 - general agricultural community concern that draft AMP was deferring too much authority to municipalities (e.g., regarding municipal site plan review)
 - general municipal concern that too much review authority was being taken away from municipalities
- Revised AMP prepared for SADC review (Dec. 2012)



AMP Development

Overall purpose, intent, goals

- Develop consistent AMPs that farmers, the public, municipalities, and CADBs can rely on
- Have standards that are performance-based rather than prescriptive – to give reliable, statewide guidance to farmers, towns, and others without being overly rigid
- Add clarity to the RTF Act – to better define the Act's numerous terms and what's protected

Three Components of New Rules

Part I: Definitions

Part II: AMP Provisions

Part III: RTF Process & Procedures





Draft AMP Overview

- Definitions
- General provisions
 - Hours of operation
 - Lighting
 - Sanitary facilities
 - Safety
 - Signs
 - Parking areas
 - Buffers
 - Outdoor sales areas



Draft AMP Overview

- Activities and Events (agritourism) provisions
 - Use of structures or improvements
 - Land use
 - Specific activities (PYO, Xmas trees, crop mazes, hayrides, animal activities, bonfires)
 - Event management plans
- Facilities (farm markets) provisions
 - Approval of site plan elements for new or expanded facilities
- Relevant federal and state laws and regulations
- Additional provisions
 - Allowance for site-specific AMPs
 - Protection from unduly restrictive local standards



The Right to Farm Act Context – What's Protected

Currently, the RTF Act (N.J.S.A 4:1C-9) protects:

- **Farm markets:** “Provide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards”

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- **Activities and events:** “Conduct agriculture-related educational and farm-based recreational activities provided that the activities are related to marketing the agricultural or horticultural output of the commercial farm”

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The Right to Farm Act Context – What's Protected – **Farm markets**

RTF Act (N.J.S.A 4:1C-3) definition of farm market:

- “A facility used for the wholesale or retail marketing of the agricultural output of a commercial farm, and products that contribute to farm income”
- If used for retail marketing: At least 51% of the annual gross sales is from the farm's output, or at least 51% of the sales area is devoted to the farm's output

The Right to Farm Act Context – What's Protected – Farm markets

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Part I: Definitions: OFDM

Goal: Create a broad umbrella for Farm Markets and Agritourism: “On Farm Direct Marketing”

“On-Farm direct marketing” (OFDM) means the on-farm facilities, activities and events that are used to facilitate and provide for direct, farmer-to-consumer sales of the agricultural output of the commercial farm and products that contribute to farm income”. (Definitions, p.3)

Part I: Definitions: **FACILITIES**

- **OFDM Facilities:** “On-farm direct marketing facility” (p. 3) – any type of farm market, including the permanent & temporary structures, improvements, equipment, and apparatuses necessary to facilitate direct market sales...

Includes farm stands, farm stores, CSAs (p. 2), and PYOs (p. 4)



Part I: Definitions: **ACTIVITIES**

- **“On-Farm Direct Marketing (OFDM) Activities”**
Means Ag-related happenings that are accessory to, and serve to increase, the direct market sales of the agricultural output of the farm;
- Activities are designed to attract customers to the farm by enhancing the experience of purchasing ag products;
- OFDM Activities include, but are not limited to:
 - 1) Agriculture-related educational activities
 - 2) Farm-based recreational activities
 - 3) Ancillary entertainment-based activities

Part I: Definitions

Ag-Related Education Activities

- **“Ag-related education activities”** (p.1) means **on-farm educational offerings that have an ag'l focus** and are related to marketing the ag or hort output of the farm... accessory to, and serve to increase, the direct-market sales of the ag output of the farm by enhancing the experience of purchasing ag products for the purpose of attracting customers to the farm
- Examples:
 - school trips - hands-on farming activities
 - educational displays
 - farm tours - farm-task experiences
 - wine tastings
 - agriculture-related lectures and classes (canning, freezing, cooking with fresh produce, pie making, pruning, beekeeping, animal care, gardening, etc.)
 - farm open houses



Part I: Definitions

Farm-Based Recreation Activities

■ **“Farm-based recreational activities”** (p.2) means recreational offerings that are **uniquely suited to occurring on a farm** and are related to marketing the ag or hort output of the farm... accessory to, and serve to increase, the direct-market sales of the ag output of the farm by enhancing the experience of purchasing ag products for the purpose of attracting customers to the farm.

■ Examples:

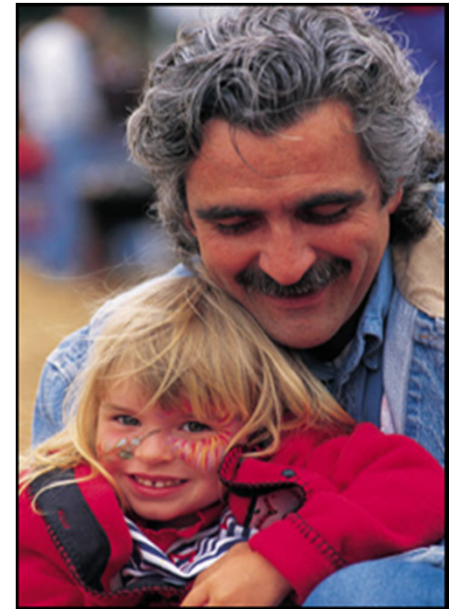
- crop mazes - hayrides
- farm animal display/petting areas
- farm tours - horseback riding
- pony rides - hiking
- bird watching - sleigh rides
- hunting and fishing
- bonfires - tractor pulls



Part I: Definitions

Ancillary Entertainment-Based Activ's

- **"Ancillary entertainment-based activities"** (p. 1)
means non-agricultural offerings commonly used as incidental components of OFDM activities
(e.g., background live or recorded music; face painting; story-telling; sandbox area; small swing set or playground equipment; pedal carts for children; picnic tables)
- if they have fees associated with them, such fees are de minimus compared to the income from the sale of the farm's ag output



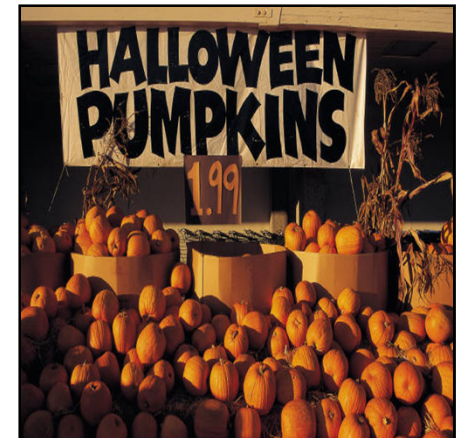
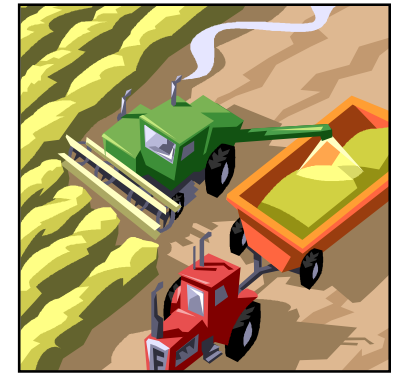
Part I: Definitions: **EVENTS**

- **“On-Farm Direct Marketing Events”**(p.3) means ag-related functions that are accessory to, and serve to increase, the direct market sales of the agricultural output of the farm
- Events are designed to attract customers to the farm by enhancing the experience of purchasing agricultural products;
 - May include OFDM activities as components;
 - Are either product-based or farm-based;
 - Occur seasonally or periodically



Part I: Definitions: **EVENTS**

- Some examples of OFDM events, provided they demonstrate the required relationship to marketing the farm's output, may include but are not limited to:
 - Ag product festival at a farm producing that particular product (e.g., apple, pumpkin, wine)
 - Seasonal harvest festival at a farm producing such seasonal products
 - Farm open house events
 - CSA membership meetings
 - Farm-to-table events that showcase the farm's agricultural output



Part I: Other Definitions

- **“Agricultural output of the commercial farm”** (p.1) means the items produced by the commercial farm and the value-added or processed products produced from those items, provided that the primary and predominant ingredients used to produce such product area grown or raised by the commercial farm.



Part I: Other Definitions

"Products that contribute to farm income" (p. 4) – means "complementary" and "supplementary" products that are sold to help attract customers to the farm market through a broadening of the range of products available and an enhancement of the experience of purchasing the farm's agricultural output

"Complementary products" – items commonly used to facilitate the use or consumption of the farm's ag output, and promotional items that help market the farm



"Supplementary products" – the ag output of other farms, and additional customary food and drink items



Part I: Other Definitions

- **"Sales area"** (p. 4) – the indoor, outdoor, covered, and uncovered areas whose primary use is the display, marketing, and selling of products;
 - doesn't include PYO fields, pastures with animals, or farm-based recreational activity areas



Part II: **AMP General Provisions**

For Facilities, Activities, and Events

- Hours of operation (p. 5) – 6 am - 10 pm (may be extended to 11 pm)
- Lighting (p. 5) – Need to provide when open after dark
- Sanitary facilities (p. 5)
 - Must provide facilities (restrooms/porta-potties) if providing seating for eating, if activities/events promote people staying on-site for more than 90 minutes, or if required by state retail food code or UCC
 - Number of facilities must be sufficient to accommodate volume of visitors
- Safety (p. 6)
 - Provide visitors with any OFDM-related rules/safety procedures; may include notice that visitors should also use common sense, be aware of inherent risks, and wear farm-appropriate attire

Part II: AMP General Provisions

Signs

- Signs (p. 6) - Generally permits use of permanent and temporary signs to promote facilities, activities, events
 - Includes advance signs along the farm's road (up to 1/2 mile away); off-site signs, e.g., directional signs; farm business signs; other signs
 - Sign standards for:
 - Maximum size (16 sq. ft.)
 - Overall combined square footage (160 sq. ft.)
 - Above size standards do not apply to primary farm business sign(s); commercial billboards; TODS; FPP signs; traffic signs; and interior signs not intended to be visible from road
 - Primary farm business sign(s) standards – maximum size (32 sq. ft.); maximum height of top of the sign above the ground (15 ft.); setback (10 ft.)



Part II: AMP General Provisions

Parking

■ Parking areas (p. 8)

- Because of strong language in RTFA noted earlier, construction of parking areas (for farm markets) must be in conformance with municipal standards
- AMP – still includes general standards for parking areas (for facilities, activities, and events); says that in the absence of municipal standards applicable to facilities, AMP's standards apply to facilities' parking areas

■ General parking area standards in AMP

- Safe, off-road parking shall be provided
- Ingress/egress, driveways, parking areas arranged to provide safe traffic circulation
- May have areas permanently and temporarily devoted to parking
- Parking area surfaces and improvements need not involve greater than the minimum level of improvements necessary to protect public health and safety

Part II: AMP General Provisions

Buffers

■ Buffers (p. 9)

- Buffers (setbacks and screening) may be used as effective tool to mitigate impacts on adjacent properties (noise, dust, light)
- In the absence of applicable municipal standards, AMP's setback standards apply to facilities
- Screening may consist of vegetation or structures, such as trees, bushes, fences, or walls
- AMP's setback numbers (next slide) are NOT for existing OFDM facilities, activities, and events, but for new or expanded ones



Part II: AMP General Provisions

Buffers (for new or expanded operations)

<u>New or expanded facilities' permanent structures</u>	<u>New or expanded activities and events</u>	<u>New or expanded areas permanently devoted to parking</u>
50-foot setback from road	25-foot setback from road	25-foot setback from road
50-foot side-yard setback	50-foot side-yard setback	50-foot side-yard setback
50-foot rear-yard setback	50-foot rear-yard setback	50-foot rear-yard setback
If the distance between the new/expanded facility and an existing, occupied residence not located on the farm is less than 100 ft., screening shall be installed	100-foot setback from an existing, occupied residence not located on the farm	

- Setbacks of a lesser distance permissible if screening is considered (and installed if appropriate) and if farm gets site-specific AMP determination
- Existing OFDM facilities, activities, and events are not subject in current layout and configuration to above standards; if situated at lesser distances than standards above, consider screening

Part II: **AMP General Provisions**

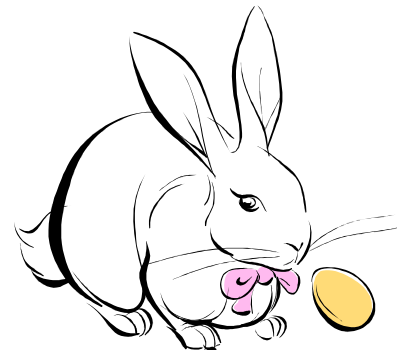
Additional provisions

- Existing and new structures or improvements may be used for activities and events (p. 12)
 - Existing – as long as use does not adversely affect continued use for ag production
 - New – as long as construction and use has negligible impact on continued use of land for ag production
- Land Use (p. 13) – Activities/events shall have negligible impact on continued use of land for ag production
- Overnight lodging (p. 17) – not protected
- Site-specific AMPs (p. 18) – Farms may request SSAMPs; SSAMP determinations must be consistent with the AMP



Part II: AMP Provisions: Activities

- Standards for specific activities (p. 13-15)
 - PYO
 - Choose-and-cut Xmas trees
 - Corn, sunflower, other crop mazes
 - Hayrides and wagon rides
 - Livestock and animal activities
 - Bonfires



Part II: **AMP Provisions:** **Events**

- Event Management Plans for Events (p. 15)
 - If having a large event with significantly more traffic/visitors, need a plan for addressing potential public health and safety issues (emergency vehicle access, traffic management, and public health management)
 - Plan must be in writing and provided to municipality at least 30 days in advance as an advisory notice and to enable any coordination that may be necessary
 - Alternatively, a farm could also get a special events permit from the town, if the town has a provision for such permits

Part II:

Approval of Site Plan Elements



- “Construction of building and parking areas in conformance with municipal standards”
 - Because the language of the law is so specific, OFDM operators must comply with applicable municipal building and parking area standards
 - But – how does this relate to site plan review?
 - Municipal site plan review often a major burden for OFDM operators
 - Recurring questions – whether farmers can seek site plan approval from CADBs instead of municipalities?
 - What is the CADB’s role vs. municipal role?
 - What about stormwater management review?



Part II:

Approval of Site Plan Elements



■ AMP approach

- Review of site plan elements is often needed (access, egress, parking, stormwater management, etc.) for new or expanded OFDM facilities
- CADBs cannot charge escrow fees for review
- Complexity of site plan review process might exceed the financial or technical capabilities of CADBs
- CADBs maintain primary jurisdiction over SSAMP requests, but...
- CADBs do not have statutory jurisdiction to review some elements (e.g., stormwater; farm mkt. building and parking area construction standards; UCC codes, etc.)

Part II:

Approval of Site Plan Elements



- So, farmers will either:
 1. Apply to CADB for SSAMP – and CADB can give approval of many site plan elements, but reserving municipal review over others, or
 2. Apply to municipality for site plan review – and seek relief from specific requirements with the CADB afterward
- CADBs and/or municipality can waive or reduce requirements based on site specific considerations, e.g., scale, intensity, farm's setting, road, minimum improvements needed for safety



Part III:

RTF Process & Procedures

- 2:76-2B.2: Eligibility of pick-your-own operations for Right to Farm protections
 - Amended for consistency with On-Farm Direct Marketing AMP
 - “PYO Operations” now addressed in AMP (N.J.A.C. 2:76-2A.13)

Part III:

RTF Process & Procedures

■ 2:76-2.3: SSAMP Determination Where CADB Exists

- CADB determines RTF eligibility
 - Commercial farm
 - Agriculture permitted under zoning
 - Operation/practice eligible for RTF protection
 - On-site CADB inspection
 - Resolution of findings
- CADB Checklist
 - Discretion to reduce/waive checklist items as appropriate
- SSAMP approval/denial
 - Resolution of findings

Part III:

RTF Process & Procedures

- 2:76-2.4: SSAMP Determination Where **NO** CADB Exists
 - SADC determines RTF eligibility
 - Commercial farm
 - Agriculture permitted under zoning
 - Operation/practice eligible for RTF protection
 - On-site SADC inspection
 - Resolution of findings
 - SADC Checklist
 - Discretion to reduce/waive checklist items as appropriate
 - SSAMP approval/denial
 - Resolution of findings considered a final administrative agency decision
 - Appealable to Appellate Division of NJ Superior Court

Part III:

RTF Process & Procedures

■ 2:76-2.5: Use of AMP & SSAMP Practice & Procedures

- Commercial farm owner/operator may request SSAMP
 - If believe municipality or county standards unduly restrictive
 - If believe municipality or county unreasonably withholding approvals
- SSAMP requests
 - For activities set forth in AMPs recommended & adopted by SADC
 - MUST BE CONSISTENT with AMPs recommended & adopted by SADC
- SSAMP obtained
 - CADB/SADC resolution can be presented to municipal officials
 - Can be used to obtain appropriate permits, if applicable



Part III:

RTF Process & Procedures

- 2:76-2.7 Conflict Disposition
 - Person aggrieved by operation of commercial farm
 - Written complaint to CADB (or SADC where no CADB exists)
 - Must include detailed facts about the contested operation/practice

Part III:

RTF Process & Procedures

- 2:76-2.7 Conflict Disposition (*continued*)
 - On-site CADB inspection
 - CADB determines:
 - (1) If commercial farm; and
 - (2) If dispute concerns activities addressed by an AMP or SSAMP approved by the CADB
 - If **YES** to (1) & (2), CADB holds public hearing concerning the dispute; but if **NO** (not a commercial farm), CADB dismisses the complaint
 - CADB decision in form of a detailed resolution with findings of fact and conclusions of law
 - CADB decision appealable to SADC, whose decision is final agency decision appealable to the Appellate Division of the NJ Superior Court



Part III:

RTF Process & Procedures

- 2:76-2.7 Conflict Disposition (*continued*)
 - On-site CADB inspection
 - CADB determines:
 - If commercial farm; and
 - If dispute concerns activities NOT addressed by AMP or SSAMP, then CADB determines whether activities are permitted under N.J.S.A. 4:1C-9

Part III:

RTF Process & Procedures

- 2:76-2.7 Conflict Disposition (*continued*)
 - IF **YES**, CADB forwards complaint to SADC for determination of whether operation is a generally accepted operation or practice
 - SADC authority to review N.J.S.A. 4:1C-9 determination by CADB
 - If SADC disagrees with CADB, complaint is dismissed
 - If SADC agrees with CADB, SADC holds public hearing limited to considering whether or not disputed agricultural activity is a generally accepted operation or practice
 - SADC decision is final agency decision appealable to the Appellate Division of the NJ Superior Court
 - If **NO**, CADB dismisses complaint
 - CADB decision in form of a detailed resolution with findings of fact and conclusions of law
 - CADB decision appealable to SADC, whose decision is final agency decision appealable to the Appellate Division of the NJ Superior Court

Part III:

RTF Process & Procedures

- 2:76-2.7 Conflict Disposition (*continued*)
 - If SADC determines operation **IS** a generally accepted operation or practice:
 - Determination sent back to CADB for public hearing on allegations of the complaint
 - CADB then issues findings and recommendations that are appealable to SADC
 - If appealed to SADC, then SADC holds public hearing on allegations of the complaint
 - If not appealed to SADC, CADB decision is binding
 - If SADC determines operation is **NOT** a generally accepted operation or practice, the complaint is dismissed

Part III:

RTF Process & Procedures

- 2:76-2.8 Public Hearing Procedures (NEW)
 - Apply to both CADB and SADC
(after jurisdiction determined)
 - **For SSAMP Requests**
 - Commercial farm gives **written notice** (at its own expense) at least 10 days before hearing, via certified mail, return receipt requested and/or by personal service to:
 - Municipalities
 - Property owners within 200 feet of commercial farm property
 - SADC
 - County planning board (where applicable)
 - Commissioner of NJ Dept. of Transportation (where applicable)

Part III:

RTF Process & Procedures

- 2:76-2.8 Public Hearing Procedures (NEW) (*continued*)
 - Required contents of Written Notice for SSAMP Requests:
 - Date, time & place of hearing
 - SSAMP that will be considered at the hearing
 - Identity of commercial farm property
(street address and/or lot and block number(s))
 - Location & time when support documents available at CADB office
 - When public comments will be accepted by CADB
 - CADB hearings on SSAMP Requests must be held in accordance with the Open Public Meetings Act (N.J.S.A. 10:4-6, et seq.)

Part III:

RTF Process & Procedures

■ 2:76-2.8 Public Hearing Procedures (NEW) (*continued*)

■ For complaints filed by aggrieved persons against commercial farms

- CADB provides written notice of the complaint (within 10 days of receipt) to:

- Commercial farm owner
- Commercial farm operator (if applicable)
- SADC
- Municipalities where commercial farm is located

- CADB hearings on complaints must be held in accordance with the Open Public Meetings Act (N.J.S.A. 10:4-6, et seq.)



Part III:

RTF Process & Procedures

- 2:76-2.9 (Reserved for future use).
- 2.76-10 (Reserved for future use).



AMP Development Process – SADC next steps

- SADC approval of draft rules
- Publish rule proposal in NJ Register
 - 60-day public comment period
 - Final adoption